

1 Case No. 11 OC 00147 1B

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ALAN GLOVER

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6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR CARSON CITY  
8

9 NEVADA REPUBLICAN PARTY, and )  
10 DAVID BUELL, an INDIVIDUAL, )

11 Plaintiffs, )

12 vs. )

13 STATE OF NEVADA, SECRETARY OF )  
14 STATE ROSS MILLER )

15 Defendants. )

FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER

16 On Thursday, May 5, 2011, Plaintiffs, the Nevada Republican  
17 Party ("NRP") and Mr. David Buell ("Mr. Buell") (collectively,  
18 "Plaintiffs") filed a Verified Complaint and Application for a  
19 Preliminary and Permanent Injunction. Additionally, Plaintiffs  
20 filed an ex parte motion for an order shortening time to respond to  
21 Plaintiffs' application. This Court granted Plaintiffs ex parte  
22 motion and heard the matter in an expedited manner.

23 On May 12, 2011, Defendant, Ross Miller, Secretary of State  
24 ("State/Defendant") filed an opposition to Plaintiffs' application.  
25 Additionally, on the same day, the Nevada State Democratic Party  
26 ("NSDP/Intervenor") filed a motion to intervene, and Answer, and an  
27 opposition to Plaintiffs' application. Plaintiffs' acknowledged  
28 that they do not object to NSDP's motion to intervene and thus,  
this Court granted such request, on Tuesday, May 17, 2011.

1 On Monday, May 16, 2011, Plaintiffs' filed a reply in support  
2 of their application for preliminary and permanent injunction.<sup>1</sup>  
3 Before the hearing, the parties met and set the date of Thursday,  
4 May 19, 2011, for this Court to conduct an evidentiary hearing.  
5 The parties both consented to consolidate the preliminary  
6 injunction hearing with a trial on the merits. See NRCP 55(a)(2).

7 On May 19, 2011, the matter of Plaintiffs' request for a  
8 preliminary and permanent injunction came on for hearing.  
9 Plaintiffs appeared by and through their respective counsel, David  
10 O'Mara, Esq. of The O'Mara Law Firm, P.C. and Rew R. Goodenow,  
11 Esq., of Parsons Behle & Latimer. Defendant Secretary of State  
12 Miller appeared by and through his counsel Kevin Benson, Esq.,  
13 Deputy Attorney General, and Scott F. Gilles, Deputy Secretary of  
14 the Elections for the State of Nevada. Defendant Nevada State  
15 Democratic Party appeared by and through its counsel Marc E. Elias,  
16 Esq., Matthew M. Griffin, Esq., and Bradley Scott Schrager, Esq.

17 **ISSUE**

18 Plaintiffs have filed this action seeking declaratory and  
19 injunctive relief in order to require the Secretary of State to  
20 construe NRS 304.240(1) in a manner that provides for full  
21 compliance with NRS Chapter 293 and to prevent the Secretary of  
22 State from placing on the special election ballot the names of  
23 individuals that have not been designated by their respective major  
24

25 \_\_\_\_\_  
26 <sup>1</sup>Attached to the respective parties' briefs were various exhibits.  
27 There were no objections by any of the three parties to the filing  
28 of these exhibits or the evidence introduced at the hearing. As  
such, the Court has reviewed and considered such exhibits in its  
findings.

1 or minor political party as the specific party's candidate for the  
2 special election.<sup>2</sup>

3 As such, the issue before this Court is whether or not the  
4 nomination of a major political party candidate or minor political  
5 party candidate is governed by the Secretary's interpretation of  
6 one sentence contained in NRS 304.240, or if a correct reading of  
7 the statutory language in Chapter 304, incorporating by reference  
8 the election laws contained in Chapter 293, including NRS 293.165,  
9 provides that each major or minor political party is entitled to  
10 designate its respective candidate that is placed on the special  
11 election ballot.

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26 <sup>2</sup> Even though the general election laws of this State apply to a  
27 special election, the term "general election" is used to describe  
28 the normal election process, while the term "special election" is  
used to describe the pending election process, unless otherwise  
stated.

1                    **FINDINGS OF FACTS AND CONCLUSIONS OF LAW<sup>3</sup>**

2            After reviewing the respective parties' briefs, the relevant  
3 statutes governing elections, reviewing case law, and having heard  
4 extensive oral argument, and good cause appearing, this Court finds  
5 as follows:

6            This Court finds that Plaintiffs are entitled to declaratory  
7 relief. See Kress v. Corey, 65 Nev. 1, 26, 189 P.2d 352, 264  
8 (1948).<sup>4</sup> **First**, a justiciable controversy, that is, a controversy  
9 in which a right is asserted against one who has an interest in  
10 contesting it. In this case, Plaintiffs' interest are adverse to  
11 the Secretary of State and Intervenor NSDP regarding the procedure  
12 for the designation and nomination of major/minor party candidates  
13 for the pending special election. **Second**, the parties are adverse  
14 and the controversy is ripe for judicial determination because all  
15 parties have an interest in the manner in which the Secretary of

16 \_\_\_\_\_  
17 3 In light of the Court's decision today, it is unnecessary for  
18 the Court to address the constitutional issues raised by  
19 Plaintiffs in this case. Indeed, under the Court's decision  
20 today, NRS 304.240 can be interpreted in a way that is  
21 constitutional. However, if the Court were to reach the  
22 constitutional issues, then the Secretary's interpretation would  
23 present challenges. For example, the Court is troubled by the  
24 Secretary of State's interpretation that provides for different  
25 treatment by the Secretary that allows the minor political  
26 parties and independents to designate their respective  
27 candidates, while denying the major political parties any access  
28 or involvement in the process of designating their candidates.

24 <sup>4</sup> In the case of Kress v. Corey, supra, the requirements for  
25 declaratory relief were summarized as follows: "(1) there must be  
26 a justiciable controversy; that is to say, a controversy in which a  
27 claim of right is asserted against one who has an interest in  
28 contesting it; (2) the controversy must be between persons whose  
interests are adverse; (3) the party seeking declaratory relieve  
must have a legal interest in the controversy, that is to say, a  
legally protectable interest; and (4) the issue involved in the  
controversy must be ripe for judicial determination."

1 State conducts the special election under Nevada law and the issue  
2 is ripe for review because the election process has already begun.

3 Additionally, injunctive relief is appropriate in this case in  
4 aid of the declaratory judgment sought. See Nevada Management  
5 Company v. Jack, 75 Nev. 232, 236, 338 P.2d 71 (1959) citing, Kress  
6 v. Corey, 65 Nev. 1, 189 P.2d 352, 364 (1948); see also, Woods v.  
7 Bromley, 69 Nev. 96, 241 P.2d 1103 (1952).

8 The evidence presented in this case leads this Court to  
9 conclude that Plaintiffs have met their burden and are entitled to  
10 permanent injunctive relief because they have shown that they are  
11 not only successful on the merits, but would suffer irreparable  
12 harm if the conduct was allowed to continue. See University and  
13 Community College Systems of Nevada v. Nevadans for Sound Gov't.,  
14 120 Nev. 712, 721, 100 P.3d 179, 187 (2004); Dangberg Holdings v.  
15 Douglas County, 115 Nev. 129, 142, 973 P.2d 311, 319 (1999).

16 The Secretary of State and NSDP assert that the Secretary of  
17 State's interpretation deserves deference while Plaintiffs contend  
18 that the Secretary of State erred because he went beyond the plain  
19 meaning of the statute in construing the statute. This Court  
20 agrees with Plaintiffs.

21 Additionally, in this case, resolution of the issue rests  
22 solely on statutory construction principles, a question of law, and  
23 deference to the Secretary of State's interpretation is not  
24 absolute. See State v. State Farm, 116 Nev. 290, 293, 995 P.2d 482  
25 (2000) ("[A] court will not hesitate to declare a regulation invalid  
26 when the regulation violates the constitution, conflicts with  
27 existing statutory provisions or exceeds the statutory authority of  
28 the agency or is otherwise arbitrary and capricious.") Even

1 reasonable agency interpretation of an ambiguous statute may be  
2 stricken by a court when a court determines that the agency  
3 interpretation conflicts with legislative intent. Id.

4 While this Court has considered the Secretary of State's  
5 interpretation for its persuasive value, this Court does not find  
6 the Secretary of State's interpretation to be controlling, and thus  
7 because the matter is purely a legal question, will not give  
8 deference to the Secretary of State's interpretation, and has  
9 undertaken an independent review of the construction of Nevada's  
10 election statutes. See Bacher v. State Engineer, 122 Nev. 1110,  
11 1117, 146 P.3d 793 (2006).

12 The Nevada laws that are at issue in the case are Chapter 304  
13 and Chapter 293 of the Nevada Revised Statutes. Unfortunately, the  
14 cross-referencing of these two chapters has resulted in some  
15 confusion.

16 In discerning the meaning of the statutory provisions  
17 regarding the special election for Nevada's Representative to the  
18 United States House of Representatives, the Court has relied on  
19 well-established precepts of statutory construction. "Unless  
20 ambiguous, a statute's language is applied in accordance with its  
21 plain meaning." See, e.g. We the People Nevada v. Miller, 124 Nev.  
22 874, 881, 192 P.3d 1166, 1170 (2008). However, if the statute "is  
23 ambiguous, the plain meaning rule of statutory construction" is  
24 inapplicable and the drafter's intent "becomes the controlling  
25 factor in statutory construction." See Harvey v. District Ct. 117  
26 Nev. 754, 770, 32 P.3d 1263, 1274 (2001). An ambiguous statutory  
27 provision should also be interpreted in accordance "with what  
28 reason and public policy would indicate the legislature intended."

1 See McKay v. Bd. of Supervisors, 102 Nev. 644, 649, 730 P.2d 438  
2 (1986). Additionally, the Court construes statutes to give meaning  
3 to all of their parts and language and has read each sentence,  
4 phrase, and word to render it meaningful within the context of the  
5 purpose of the legislation. See Coast Hotels v. State, Labor  
6 Comm'n, 117 Nev. 835, 841, 34 P.3d 546 (2001). Further, no part of  
7 the statute should be rendered meaningless and its language "should  
8 not be read to produce absurd and unreasonable results." See  
9 Banegas v. SIIS, 117 Nev. 222, 228, 19 P.3d 245 (2001).

10 NRS 304.240 is ambiguous. The Court has reviewed the scant  
11 legislative history and finds that it does not assist the Court in  
12 resolving the particular matter. NRS 304.230 clearly states that  
13 the Nevada Legislature was concerned with a special election, yet,  
14 it is clear that the Nevada Legislature intended for the election  
15 to be conducted pursuant to the provisions of Chapter 293 of NRS.  
16 See NRS 304.240.

17 Thus, the Nevada Legislature's intentions and the reasons and  
18 public policy indicate that the general election laws of the State  
19 of Nevada, Chapter 293 of NRS, apply to this election.

20 When possible, the interpretation of a statute or  
21 constitutional provision will be harmonized with other statutory or  
22 provisions to avoid unreasonable or absurd results. See Nevada  
23 Power Co. v. Haggerty, 115 Nev. 353, 364, 989 P.2d 370 (1999).  
24 Additionally, all statutes are to be read *in pari materia*. See  
25 Farm Mut. v. Comm'r of Ins., 114 Nev. 535, 541, 958 P.2d 733, 737  
26 (1998). When this is done, in this instance, the result is that a  
27 major or minor political party designates its candidate to be  
28 placed on the special elections ballot.



1       The Secretary of State's reliance on a single sentence within  
2 NRS 304.240 without considering other statutes within Chapter 293  
3 produces an unreasonable and absurd result. Indeed, the Secretary  
4 of State has provided argument that the general election laws apply  
5 in every case, yet it is clear that the Secretary of State is  
6 picking and choosing from different portions of the general  
7 election statutes to support its interpretation. The Court is  
8 troubled by this method. Indeed, even under the Secretary of  
9 State's own Interpretation, he has chosen not to apply the general  
10 election laws such as NRS 293.165 and NRS 293.260, yet the  
11 Interpretation makes reference to NRS 293.1715(2) in paragraphs 3  
12 and 4; NRS 293.1276 through NRS 293.1279 in paragraphs 3, 4 and 5;  
13 and incorrectly makes reference to NRS 193.200, which should be NRS  
14 293.200. Each of these statutes referenced in his Interpretation  
15 is specifically excluded under the provisions of NRS 293.175 in  
16 special elections.

17       If the Court were to follow the Secretary of State's  
18 arguments, it would allow any individual to file under a major  
19 political party, yet limit the same individual from filing as a  
20 minor party candidate or an independent candidate because that  
21 individual would either have to be placed on the minor party's list  
22 or file a petition of candidacy supported by 100 registered voters.  
23 This is an unreasonable and absurd result; and results in unfair  
24 treatment.

25       Further, the State's argument that NRS 304.240 supercedes the  
26 provisions of Chapter 293 of NRS because NRS 304.240 is a specific  
27 statute while NRS 293.165 is a general statute is incorrect.  
28 Indeed, "when statutes are potentially conflicting, [the Court]



1 will attempt to construe both statutes in a manner to avoid  
2 conflict and promote harmony." See Beazer Homes Nevada, Inc. v.  
3 Eighth Judicial Dist., 120 Nev. 575, 587, 97 P.3d 1132 (2004).

4 The Nevada Legislature adopted the statutory provision at  
5 issue in this case during the 2003 legislative session. See AB 344  
6 (Statutes of Nevada 2003). The legislative history cited by  
7 Plaintiffs evidences an intent to adjust the election timeframes  
8 required by NRS Chapter 293, not to adopt a new election process.  
9 There are two steps in regards to the process for an individual to  
10 be nominated and then placed on the ballot as a candidate for the  
11 position. **First**, under NRS 304.240, the language sets forth that:

12 [e]xcept as otherwise provide in this subsection, a  
13 **candidate** must be nominated in the manner provided in  
14 Chapter 293 of NRS and must file a declaration or  
15 acceptance of candidacy within the time prescribed by the  
Secretary of State pursuant to NRS 293.204, which must be  
established to allow a sufficient amount of time for the  
mailing of election ballots."

16 See NRS 304.240(1) (emphasis added).

17 NRS 293.165 provides,

18 [e]xcept as otherwise provided in NRS 293.166, a vacancy  
19 occurring in a major or minor political party nomination  
20 for a partisan office may be filled by a **candidate**  
21 **designated by the party central committee** of the county  
or State, as the case may be, of the major political  
party or by the executive committee of the minor  
political party..

22 See NRS 293.165(1) (emphasis added). Here, in reading the two  
23 statutes in harmony with each other, the important words in each  
24 particular statute are, NRS 304.240, "a candidate of a major  
25 political party" and NRS 293.165, "a candidate designated by."  
26 Further, there is no language in NRS 304.240 that conflicts with  
27 the right of a major political party to designate its candidate.  
28 Thus, NRS 293.165 is applicable.

1 Under the Secretary of State's Interpretation, he would  
2 eliminate any involvement of the major political parties in the  
3 nomination process, while allowing the minor political party to  
4 preclude an individual from nominating themselves for this office,  
5 which is unreasonable. The language of NRS 304.240 does not state,  
6 "a member of a major political party." The language specifically  
7 states, "a candidate of a major political party." Additionally,  
8 Black's Law Dictionary, Seventh Edition, defines the word,  
9 "nominate" to mean, "1. [t]o propose (a person) for election or  
10 appointment"; or, "2. [t]o name or designate (a person) for a  
11 position." This language sets forth that an action must be taken  
12 for a designation or nomination of a candidate, which in this case,  
13 is pursuant to NRS 293.165 for major and minor party candidates.  
14 Every member of a major party is certainly not a candidate of that  
15 party. There must be a process to designate a candidate, namely  
16 NRS 293.165.

17 **Second,** in reading the statutory laws in harmony, it is clear  
18 that the language in the third, fourth and fifth sentences of NRS  
19 304.240 sets forth the process of how the major/minor party  
20 candidate is placed on the ballot after being designated. Indeed,  
21 the provisions in respect to the minor party candidate indicates  
22 placement on the ballot. The language in regards to independent  
23 candidates indicates an appearance on the ballot. In order to give  
24 effect to the third sentence regarding major party candidates, the  
25 language provides the method for placing a major party candidate on  
26 the ballot.

27 This process conforms with the general election statutes  
28 regarding placement of candidates on the ballot and that in most

1 cases, only one candidate per major or minor party is placed on the  
2 ballot for each position. See NRS 293.260; see also, State ex rel.  
3 Cline v. Payne, 59 Nev. 127, 86 P.2d 32 (1939); NRS  
4 293.1714(4) ("The name of only one candidate of each minor political  
5 party for each partisan office may appear on the ballot for a  
6 general election.")

7 Finally, the resignation of former Congressman Dean Heller  
8 created a vacancy in the nomination. Indeed, like Nevada's  
9 election in 1954, which did not allow for a primary, a vacancy was  
10 created. At the time, a similar Nevada law provided,

11 The provisions of § 25 of the primary election law, as  
12 amended 1947 p. 478, § 2429 N.C.L. 1943-1949 Supp.,  
13 relate to the filling of a vacancy where a person  
14 nominated at the preceding primary election has died,  
resigned or for some other reason ceased to be a  
candidate.

15 See Brown v. Georgetta, 70 Nev. 500, 507, 275 P.2d 376, 380 (1954).  
16 In citing State ex inf. Barrett ex rel. Shumard v. McClure, 299 Mo.  
17 688, 253 S.W. 743, the Nevada Supreme Court rejected the contention  
18 that the death of Senator McCarran created only a vacancy in the  
19 office and not a vacancy in the nomination. Like Brown, NRS  
20 293.165 is broad enough to permit the designation and nomination of  
21 a candidate in this situation, and thus, there is a vacancy in the  
22 nomination.

23 As such, had this Court allowed the Secretary of State's  
24 Interpretation to stand, Plaintiffs would suffer irreparable harm.  
25 Indeed, under the Secretary's Interpretation, the major parties  
26 would be specifically excluded from any involvement in the  
27 designation and nomination process, for which compensatory relief  
28 is inadequate.

1 Based upon the foregoing findings, and good cause appearing,  
2 **IT IS HEREBY ORDERED** as follows:

3 1. This Court finds in favor of Plaintiffs' and against  
4 Defendant and Intervenor.

5 2. Plaintiffs' claim for a permanent injunction is granted  
6 and the Secretary of State is enjoined from placing the names of  
7 members of a majority political party or a minority political party  
8 on the ballot until the candidates are designated by their  
9 respective major or minor political party pursuant to NRS 293.165.

10 3. The time frames established by the Secretary of State  
11 regarding the designation of a party's candidate and the filing of  
12 the declaration or acceptance of candidacy shall be extended up to,  
13 and including, June 30, 2011,<sup>5</sup> so as to allow the respective  
14 political parties an opportunity to comply with NRS 293.165.

15 4. This Order is nunc pro tunc to the date the Court issued  
16 its Order from the bench on May 19, 2011.

17 5. Each party shall bear their own attorney's fees and costs  
18 in respect to this matter.

19

20 DATED: May 23, 2011

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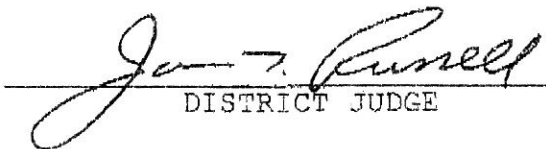
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27 <sup>5</sup> The Secretary of State acknowledged that the Registrar of Voters  
28 would need to submit the ballot to the printers by July 8, 2011  
which is after the June 30, 2011, date requested by Plaintiffs.

  
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

Depositing for mailing, in a sealed envelope, U.S. Postage prepaid, at Reno, Nevada

Personal delivery

X Facsimile

Messenger Service

Federal Express or other overnight delivery

Email

addressed as follows:

Honorable Ross Miller  
Attn: Scott Gilles  
Secretary of State of Nevada  
101 N. Carson Street #3  
Carson City, Nevada 89701  
775.684.5718

Catherine Cortez Masto, Esq.  
Nevada Attorney General  
100 N. Carson Street  
Carson City Nevada  
775.684.1108

Bradley Scott Schrage  
3773 Howard Hughes Parkway  
Third Floor  
Las Vegas, Nevada 89169  
702.737.7705

Matthew M. Griffin  
1400 S. Virginia Street, Ste. A  
Reno, Nevada 89502  
775.841.2119

David C. O'Mara, Esq.  
The O'Mara Law Firm, P.C.  
311 E. Liberty Street  
Reno, Nevada 89501

Rew R. Goodenow Bar No. 3722  
Parsons Behle & Latimer  
50 West Liberty Street  
Reno, NV 89501

DATED: May 23, 2011.

